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No. 07-1121

IN THE

Supreme Court of the United States

LYNN JEWELL,
Petitioner,

v.

LIFE INSURANCE COMPANY OF NORTH AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF UNITED POLICYHOLDERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
STATEMENT OF STANDING	1
STATEMENT OF INTEREST OF *AMICUS CURIAE*	2
POINT I	4
POINT II	4
POINT III	4

TABLE OF AUTHORITIES

CASES — Page

Humana Inc. v. Mary Forsyth, 525 U.S. 299 (1999) 3

Julian v. Hartford Underwriters Ins. Co., 110 P.3d 903 (Cal. 2005) 3

Miller-Wohl Co. v. Commissioner of Labor & Indus., 694 F.2d 203 (9th Cir. 1982) 3

State Farm Mutual. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003) 3

Vandenberg v. Superior Court, 982 P.2d 229 (Cal. 1999) 3

Watts Industries, Inc. v. Zurich American Ins. Co., 121 Cal. App. 4th 1029 (2d Dist. 2004) 3

MISCELLANEOUS

Jay Conison, *Suits for Benefits Under ERISA*, 54 U. Pitt. L. Rev. 1 (Fall 1992).. 4

Bruce J. Ennis, *Effective Amicus Briefs*, 33 Cath. U.L. Rev. 603 (1984) 3

John H. Langbein, *Trust Law as Regulatory Law: The Unum/Provident Scandal and Judicial Review of Benefit Denials Under ERISA*, 101 Nw. U. L. Rev. 1315 (Spring 2007) 4

Peter Phillips et al., *Practices in Health Care and Disability Insurance: Delay, Diminish, Deny, and Blame*, http://www.justhealthnow.org/Projects/Practices-in-Health-Care-and-Disability-Insurance-Delay-Diminish-Deny-and-Blame.html ... 4

Jeffrey Rosen, *Supreme Court, Inc.*, N.Y. Times, March 16, 2008 at 38 4

TABLE OF AUTHORITIES—Continued

	Page
Robert L. Stern et al., *Supreme Court Practice*, 570-71 (1986)	3
Internal Revenue Code § 501(c) (3) (2006)	2

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STATEMENT OF STANDING

Pursuant to Rule 37, a blanket letter of consent from the parties to this appeal has been filed with the Clerk of the Court permitting this brief on behalf of *amicus*.[1]

[1] Pursuant to Rule 37.6, no counsel for either party has authored this brief in whole or in part and no person or entity has made a monetary contribution to the preparation or submission of this brief.

This *Amicus* brief is submitted by Eugene R. Anderson, a member of the Bar of this Court, on behalf of United Policyholders.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

United Policyholders, ("UP") is a not-for-profit corporation founded in 1991 as an educational resource for the public on insurance issues and insurance consumer rights. The organization is tax-exempt under Internal Revenue Code § 501(c) (3). UP is based in California but operates nationwide and is funded by donations and grants from individuals, businesses, and foundations and governed by an eight-member Board of Directors. UP contributes on an ongoing basis to the formulation of insurance related public policy at both the national and state level.

UP exists because businesses and individuals rely on the insurance they buy to protect themselves, their property and their livelihoods against the risk of loss and insurance companies are in business to earn profits by assuming that risk. Insurance is a regulated industry because of this dynamic and the fact that the financial security insurance policies provide is an integral part of the fabric of our society and economy.

UP monitors the insurance sector, works with public officials, has a nationwide network of volunteers and affiliate organizations, publishes written materials, files *amicus* briefs in cases involving coverage and claim disputes and is a general information clearinghouse on consumer issues related to commercial and personal lines insurance products. UP

provides disaster aid to property owners across the U.S. via educational activities designed to illuminate and demystify the claim process. For more information about UP, please visit www.unitedpolicyholders.org.

In this brief, United Policyholders seeks to fulfill the "classic role of *amicus curiae* by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co. v. Commissioner of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). This is an appropriate role for *amicus curiae*. As commentators have often stressed, an *amicus* is often in a superior position to "focus the court's attention on the broad implications of various possible rulings." R. Stern, E. Greggman & S. Shapiro, *Supreme Court Practice*, 570-71 (1986) (*quoting* Ennis, *Effective Amicus Briefs*, 33 Cath. U.L. Rev. 603, 608 (1984)).

United Policyholders has filed over one hundred and thirty five *amicus* briefs since it was founded. UP's *amicus* brief was cited in the U.S. Supreme Court's opinion in *Humana Inc. v. Mary Forsyth*, 525 U.S. 299 (1999). UP was the only national consumer organization to submit an *amicus* brief in the landmark case of *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). Arguments from our *amicus curiae* brief were cited with approval by the California Supreme Court in *Vandenberg v. Superior Court*, 982 P.2d 229 (Cal. 1999), and discussed in *Julian v. Hartford Underwriters Ins. Co.*, 110 P.3d 903 (Cal. 2005). UP's *amicus* brief factored into the decision in *Watts Industries, Inc. v. Zurich American Ins. Co.*, 121 Cal. App. 4th 1029 (2d Dist. 2004).

United Policyholders respectfully suggests that this Court grant the Petitioner, Lynn Jewell's, petition and in support says:

POINT I.

This case does not involve the issues that normally concern this Court.

While not compelling, this case is about the denial of benefits to a disabled individual. See article in the magazine section of the Sunday New York Times, March 16, 2008 by Jeffrey Rosen entitled "Supreme Court Inc.", p. 38.

POINT II.

This case involves a split among the circuits.

United Policyholders respectfully submits that it anticipates that this point will be fully briefed by the Petitioner.

POINT III.

This case and the Cases that Reach Similar Conclusions are Against Weighty and Thoughtful Academic and Scholarly Authority.

Yale Law School Professor John H. Langbein has seen the issue here and has written a scholarly article on the subject. *See* John H. Langbein, *Trust Law as Regulatory Law: The Unum/Provident Scandal and Judicial Review of Benefit Denials Under ERISA*, 101 Nw. U. L. Rev. 1315, Spring 2007. *See, also* Jay Conison, *Suits for Benefits Under ERISA*, 54 U. Pitt. L. Rev. 1 (Fall 1992) and Professor Peter Phillips and Bridget Thornton, *Practices in Health Care and Disability Insurance: Delay, Diminish, Deny, and Blame*, which was

published on-line at http://www.justhealthnow.org/Projects/Practices-in-Health-Care-and-Disability-Insurance-Delay-Diminish-Deny-and-Blame.html.

Respectfully submitted,

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